IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8047 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULBHAI MAGANBHAI PANJAWANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8047 of 1999

MR SATYEN B RAWAL for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner, a retired Soldier, was given licence for retail licence of Kerosene at village

Rajcharadi, Tal. Dhrangadhra, Dist. Surendranagar and the licence of the petitioner was renewed upto 31st December 2001. An inspection was carried out on 8th January 1999 by the Deputy Collector, Dhrangadhra and the following irregularities were found:

That the petitioner was not keeping open the shop as per the prescribed time; the consumers are not given more than five litres of Kerosene though the prescribed quota is of eight litres and they were charged more than the prescribed rate for which statements were recorded and further irregularities were also found. The shop was kept open only for two hours and that too, in the evening between 4.00 to 6.00. The conduct of the petitioner was not proper towards the customers and they were refused the commodities whenever they used to go for purchase of the same. It was also found that the petitioner was charging 40 ps. per litre in addition to the prescribed rate. It was also alleged that the petitioner has disposed of a total of 2219 litres of Kerosene collected by him for the month of October, November and December. It was also alleged against the petitioner that some of the bills from Nos.648 dated 12th October 1998 to No.831 dated 28th December 1998 were bogus. Apart from that, from the stock register and the bill book, there was discrepancy of 26 litres of Kerosene.

2.1 A show cause notice was issued by the Mamlatdar, Dhrangadhra, on 1st February 1999 and the petitioner appeared before the Mamlatdar on 24th March 1999 and accepted the mistake and requested the authority that since it being a small mistake and this is only the livelihood of the petitioner and being an Ex-serviceman on which basis, he was given the licence and because of old age, the irregularity be regularised and may be pardoned and the notice dated 1st February 1999 be withdrawn.

2.2 The Mamlatdar, Dhrangadhra by his order dated 23rd April 1999 has cancelled the licence of the petitioner and also confiscated the deposit of the petitioner in view of the finding that the petitioner has committed breach of Clauses No.16, 18(2), 18(9), 22, 23 and 24 and Condition Nos.4(1), 6(2), 6(3), 8 and 11 of the Licence.

3. The petitioner preferred an appeal before the Collector, Surendranagar under Section 11 of the Essential Commodities Act being Appeal No. 3 of 1999 which was dismissed by order dated 9th June 1999.

4. It is true that in the order, the Collector has mentioned that on humanitarian ground and looking to the family circumstances of the petitioner and as this was the only livelihood of the petitioner, the licence should not be cancelled and the deposit should not have been confiscated, but before that decision could be rendered, as the Collector received representation from the village people and therefore, in the order, he has confirmed the order of the Mamlatdar.

5. Against the order of the Collector, the petitioner approached the State Government by way of Revision Application which was also dismissed by the order dated 27th August 1999 by the Deputy Secretary. Learned Advocate Mr.Raval for the petitioner contended that though the petitioner appeared as party-in-person before both the authorities, he was not given the documents which have been relied upon by the authorities. Secondly, Mr.Raval contended that the Collector has not given the documents which have been received by the Collector after he was communicated that the appeal was allowed and non-supply of the documents has adversely affected the case of the petitioner. Mr.Raval contended that this being only livelihood of the petitioner, non-supply of documents has adversely affected him and the cancellation of licence is a very harsh punishment.

6. Learned Advocate Mr.Raval has relied upon the judgment of this Court in the case of Gulabdas Maganlal Ganjawala v. B. Narsimhan, Collector, Surat and anr., reported in 1985 GLT 173 for non- supply of documents. The said authority will not applicable in this case inasmuch as the petitioner has never applied before the authority for supply of the said documents. Apart from that, Mr.Raval was not in a position to show that non-supply of documents has materially affected the case of the petitioner.

7. The above contention has never been argued before the revisional authority. Before the revisional authority, the contention raised by the petitioner was that he being an Ex-serviceman and this is the only livelihood of the petitioner, his licence should not have been cancelled. The revisional authority has considered the case of the petitioner and while dismissing the Revision Application, has found that the petitioner is in habit of doing the same illegality or irregularity inasmuch as, earlier on 30th July 1997, during the inspection, excess stock of 64 litres of Kerosene was found which was seized because of the irregularity committed by the petitioner and the said order is

accepted by the petitioner. Thus, the revisional authority has found that though eight litres of kerosene was to be given per Card, the petitioner has given only five litres and the bills were prepared in the bogus name and therefore, the representation was made by the village people. The authorities have followed the procedure and therefore, the revisional authority has found that the order passed by both the authorities is just and proper. The contention raised by Mr.Raval that the documents are not supplied, was never raised by the petitioner before any of the authorities earlier and apart from that, excess stock of 2219 litres of kerosene was disposed of by the petitioner is not disputed, except bare statement that he has given eight litres to each of the Card holders. No documentary proof like bill or accounts or any other stock register which could have established that the allegations against the petitioner are without any basis and therefore, the finding of both the authorities are just and proper and no interference is called for. Therefore, the petition is required to be dismissed and it is dismissed. Rule is discharged, with no order as to costs.

(K.S. Jhaveri, J.)
Sreeram.